

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF DELAWARE**

SPINE CARE DELAWARE, LLC	)	
	)	
Plaintiff,	)	C.A. No.
	)	
v.	)	
	)	TRIAL BY JURY DEMANDED
NATIONWIDE MUTUAL INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §1446, Defendant Nationwide Mutual Insurance Company ("Nationwide"), by and through their undersigned attorneys, give Notice of the Removal of this action from the Superior Court of the State of Delaware, in and for New Castle County. Defendant set forth the grounds for Removal as follows:

1. This action was commenced by Plaintiff in the Superior Court of the State of Delaware, in and for New Castle County, by the filing of their Complaint on January 18, 2006. A copy of the Complaint is attached hereto as Exhibit "A".
2. This Notice of Removal is timely because it is being filed within thirty (30) days of the receipt of service of process by Defendant. See Exhibit "B" attached hereto.
3. The Complaint is the "initial pleading setting forth the claims for relief upon which the action is based" for purposes of 28 U.S.C. §1445(b).
4. The basis for the subject matter jurisdiction of this Court is apparent on the face of the Complaint, which states that Plaintiff is a corporation of the State of Delaware.
5. The Defendant is not incorporated in Delaware, nor does it maintain a principal place of business or residence in Delaware. Defendant Nationwide Mutual Insurance

Company is a business entity with its principle place of business located in the State of Ohio and incorporated in the State of Ohio.

6. Upon information and belief, the amount in controversy in this action exceeds \$75,000, exclusive of interests and costs, although Defendant denies liability for any amount.

7. Defendant, Nationwide Mutual Insurance Company, by and through its principal, consents to Federal Court Jurisdiction.

8. Accordingly, this is an action "between citizens of different States" where "the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs," for purposes of 28 U.S.C. §1441(a).

9. Defendants expressly reserve the right to raise all defenses and objections in this action after it is removed to this Court, including but not limited to the defense of lack of *in personam* jurisdiction and lack of service of process.

10. Notice of the filing of the Notice of Removal of this action from the Superior Court of the State of Delaware, in and for New Castle County to the United States District Court for the District of Delaware to all adverse parties will be promptly given.

11. Promptly after filing this Notice of Removal, a certified copy will be filed with the Prothonotary for the Superior Court of the State of Delaware, in and for New Castle County, in accordance with 28 U.S.C. §1446(d).

**WHEREFORE**, Defendant request this action be removed from the Superior Court of the State of Delaware, in and for New Castle County to the United States District Court of the State of Delaware.

***MORGAN SHELBY & LEONI***

A handwritten signature in black ink, appearing to read 'R. Leoni', with a long horizontal flourish extending to the right.

ROBERT J. LEONI

Rleoni@mslde.com

221 Main Street

Stanton, Delaware 19804

(302) 995-6210

Attorney for Defendant,

Nationwide Mutual Insurance Company

**DATE:** March 13, 2006

## SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS)

COUNTY: NEW CASTLE X KENT FILED  
 Civil Case Code: CDEJ PROTHONOTARY

Civil Action Number: 06C-01-177 JEB  
 Civil Case Type: Declaratory Judgment

2006 JAN 18 PM 4:40  
 PAGE TWO FOR CIVIL CASE CODE & CIVIL CASE TYPE)

<p>Caption:</p> <p><u>SPINE CARE DELAWARE, LLC</u></p> <p>Plaintiff,</p> <p>v.</p> <p><u>NATIONWIDE MUTUAL INSURANCE COMPANY,</u></p> <p>Defendant.</p>	<p>Name and Status of Party filing document:</p> <p><u>Spine Care Delaware, LLC, Plaintiff</u></p> <p>Document Type: (e.g., COMPLAINT; ANSWER WITH COUNTERCLAIM)</p> <p><u>Complaint</u></p> <p>Non-Arbitration <u>X</u> eFile</p> <p>(CERTIFICATE OF VALUE MAY BE REQUIRED)</p> <p>Arbitration <u>    </u> Mediation <u>    </u> Neutral Assessment <u>    </u></p> <p>DEFENDANT (CHECK ONE) ACCEPT <u>    </u> REJECT <u>    </u></p> <p>JURY DEMAND YES <u>X</u> NO <u>    </u></p> <p>TRACK ASSIGNMENT REQUESTED (CHECK ONE):</p> <p>EXPEDITED <u>    </u> STANDARD <u>X</u> COMPLEX <u>    </u></p>
<p>ATTORNEY NAME(S):</p> <p><u>John S. Spadaro</u></p> <p>ATTORNEY ID(S):</p> <p><u>3155</u></p> <p>FIRM NAME:</p> <p><u>Murphy Spadaro &amp; Landon</u></p> <p>ADDRESS:</p> <p><u>1011 Centre Road, Suite 210</u></p> <p><u>Wilmington, DE 19805</u></p> <p>TELEPHONE NUMBER:</p> <p><u>(302) 472-8100</u></p> <p>FAX NUMBER:</p> <p><u>(302) 472-8135</u></p> <p>E-MAIL ADDRESS:</p> <p><u>jspadaro@msllaw.com</u></p>	<p>IDENTIFY ANY RELATED CASES NOW PENDING IN THE SUPERIOR COURT BY CAPTION AND CIVIL ACTION NUMBER INCLUDING JUDGE'S INITIALS</p> <p><u>Mark Manniso and Spine Care Delaware v. State Farm Mutual Automobile Insurance Company, C.A. No. 04C-04-264JEB (Del. Super. Ct.)</u></p> <p>EXPLAIN THE RELATIONSHIP(S):</p> <p><u>Manniso and this case involve the identical issue of PIP coverage for Spine Care Delaware's facility fee charges.</u></p> <p>OTHER UNUSUAL ISSUES THAT AFFECT CASE MANAGEMENT:</p> <p><u>    </u></p> <p><u>    </u></p> <p><u>    </u></p> <p>(IF ADDITIONAL SPACE IS NEEDED, PLEASE ATTACH PAGE.)</p>
<p>THE PROTHONOTARY WILL NOT PROCESS THE COMPLAINT, ANSWER, OR FIRST RESPONSIVE PLEADING IN THIS MATTER FOR SERVICE UNTIL THE CASE INFORMATION STATEMENT (CIS) IS FILED. THE FAILURE TO FILE THE CIS AND HAVE THE PLEADING PROCESSED FOR SERVICE MAY RESULT IN THE DISMISSAL OF THE COMPLAINT OR MAY RESULT IN THE ANSWER OR FIRST RESPONSIVE PLEADING BEING STRICKEN.</p>	

**SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS)  
INSTRUCTIONS**

**CIVIL CASE TYPE**

Please select the appropriate civil case code and case type (e.g., CODE - AADM and TYPE - Administrative Agency) from the list below. Enter this information in the designated spaces on the Case Information Statement.

<b>APPEALS</b> AADM- Administrative Agency ACCP - Court of Common Pleas ACER - Certiorari AFAM - Family Court AIAB - Industrial Accident Board APSC - Public Service Commission AUIB - Unemployment Insurance Appeal Board <b>COMPLAINTS</b> CAAA - Auto Arb Appeal * CASB - Asbestos CATT - Foreign & Domestic Attachment CCCP - Transfer from CCP* CCHA - Transfer from Chancery * CCON - Condemnation CDBT - Debt/Breach of Contract * CDEF - Defamation * CDEJ - Declaratory Judgment CEJM - Ejectment * CFJG - Foreign Judgment * CINT - Interpleader CLIB - Libel * CMAL - Malpractice * CACT - Class Action CPIA - Personal Injury Auto * CPIN - Personal Injury * CPRD - Property Damage * CPRL - Products Liability * CRPV - Replevin CSBI - Silicone Breast Implant CTAX - Tax Appeal CFRD - Fraud Enforcement CSPD - Summary Proceedings Dispute <b>INVOLUNTARY COMMITMENTS</b> INVC- Involuntary Commitment	<b>MISCELLANEOUS</b> MAAT - Appointment of Attorney MAFF - Application for Forfeiture MCED - Cease and Desist Order MCRO - Complaint Requesting Order MCTO - Consent Order MHAC - Habeas Corpus MIND - Destruction of Indicia of Arrest MISS - Issuance of Subpoena/Material Witness MMAN - Mandamus MOUT - Out of State Deposition MPOS - Writ of Possession MPRO - Writ of Prohibition MROP - Petition for Return of Property MSAM - Satisfy Mortgage MSOJ - Compel Satisfaction of Judgment MTAX - Tax Ditches MVAC - Vacate Public Road MSEM - Set Aside Satisfaction of Mortgage MSSS - Set Aside Sheriff's Sale MSEL - Sell Real Estate for Property Tax MTOX - Hazardous Substance Cleanup MCVP - Civil Penalty MREF - Tax Intercept MGAR - Appointment of Guardianship MFOR - Intercept of Forfeited Money MSET - Structured Settlement  <b>MORTGAGES</b> MORT - Mortgage  <b>MECHANICS LIENS</b> LIEN - Mechanics Lien *  <b>OTHER</b> OTHR - Specify Type
---	--

Case types subject to Arbitration Rule 16.1

**DUTY OF THE PLAINTIFF**

Each plaintiff/counsel shall complete the attached Civil Case Information Statement (CIS) and file with the complaint.

**DUTY OF THE DEFENDANT** Each defendant/counsel shall complete the attached Civil Case Information Statement (CIS) and file with the answer and/or first responsive pleading.

1/26/06

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

FILED

2006 JAN 18 PM 4:40

SPINE CARE DELAWARE, LLC

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE  
COMPANY,

Defendant.

C.A. No. 06C-01-177 JEB

NON-ARBITRATION  
TRIAL BY JURY DEMANDED

PRAECIPE FOR SUMMONS

TO: PROTHONOTARY, NEW CASTLE COUNTY SUPERIOR COURT  
Superior Court  
New Castle County Courthouse  
500 King Street  
Wilmington, DE 19801

FILED  
NOTED  
RECEIVED  
JAN 18 2006

PLEASE ISSUE WRIT COMMANDING the Sheriff of ~~New Castle County~~ <sup>KENT</sup> to serve the Summons and Complaint on Nationwide Mutual Insurance Company c/o the Delaware Insurance Commissioner, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, in accordance with 18 Del. C. § § 524 and 525. A check made payable to the Delaware Insurance Commissioner in the amount of \$25.00 is attached hereto representing the required fee.

MURPHY SPADARO & LANDON

1 writ issued,  
sh-ka, ck #21857, amt \$30  
ins.com, #21855, amt \$25

Clara T. Halsted for  
John S. Spadaro  
1011 Centre Road, Suite 210  
Wilmington, DE 19805  
(302) 472-8100  
Attorneys for Plaintiffs

January 18, 2006

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

FILED  
HONORARY  
2006 JAN 18 PM 4:40

SPINE CARE DELAWARE, LLC

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE  
COMPANY,

Defendant.

C.A. No. 06C-01-177 JEB

NON-ARBITRATION  
TRIAL BY JURY DEMANDED

NOTED  
INCORRECTLY FILED  
2006 JAN 18 PM 4:40

**COMPLAINT FOR DECLARATORY AND OTHER RELIEF**

Plaintiff Spine Care Delaware, LLC, as assignee of certain patient-assignors, alleges as follows:

**Introduction: Nature of the Action**

1. This is an action seeking recovery of compensatory damages, punitive damages and declaratory relief arising from defendant's breaches of insurance contracts, bad faith breaches of insurance contracts, violations of 6 Del. C. §2513, and otherwise wrongful refusal to honor its contractual obligations arising under certain policies of automobile insurance issued by that defendant, Nationwide Mutual Insurance Company ("Nationwide"), to the plaintiff's patient-assignors.
2. This action seeks, among other relief, a declaration that Nationwide must pay as Personal Injury Protection benefits under 21 Del. C. §2118 certain "facility fee" charges incurred in the course of plaintiff's rendition of medical services to its patient-assignors, all of whom are insured by Nationwide.

**The Parties**

3. Plaintiff Spine Care Delaware, LLC ("SCD") is a Delaware limited liability company whose principal place of business is located at 4102 Ogletown-Stanton Road, Newark, Delaware 19713. SCD is engaged in the practice of medicine, and renders medical treatment (including the use of spinal injections) to persons with orthopedic injuries. SCD often treats Delaware residents for injuries suffered in automobile collisions.

4. Defendant Nationwide Mutual Insurance Company is an Ohio corporation with offices at One Nationwide Plaza, Columbus, OH 43216. It is engaged in the business of insurance, and regularly sells automobile insurance within the State of Delaware.

**The PIP Statute and the Facility Fee**

5. Under 21 Del. C. §2118, every owner of a motor vehicle registered in Delaware must maintain specified forms of insurance in specified minimum amounts. Among these is Personal Injury Protection (or "PIP") coverage, defined under the statute as "[c]ompensation to injured persons for reasonable and necessary expenses incurred within 2 years from the date of the accident" for medical services, lost earnings and other expenses.

6. Because SCD often treats Delaware residents for injuries suffered in automobile collisions, it routinely renders treatment whose costs are covered under the PIP portion of Delaware auto insurance policies (including policies sold by Nationwide).

7. When medical facilities (including hospitals, medical centers and other patient care facilities) bill for the care they provide, they customarily include a charge for the use of the facility itself. That charge is known, in the jargon of health insurance, as a "facility fee" charge.

8. When SCD renders care to Delaware PIP claimants and other injured persons, it too charges a facility fee. Health insurers, including (on information and belief) easily recognizable



names like BCBS, Inc., Coventry Health, Principal Financial Group and Aetna USHealthcare, routinely cover SCD's facility fee charge. Delaware PIP insurers, including (on information and belief) Allstate Insurance Company, Liberty Mutual Fire Insurance Company, GEICO and others, likewise cover SCD's facility fee charge on PIP claims. Medicare, too, routinely reimburses SCD's facility fee charge.

### **Nationwide's Wrongful Conduct**

9. Nationwide routinely denies payment of PIP benefits with respect to SCD's facility fee charge. On information and belief, Nationwide's coverage denials with respect to SCD's facility fee charge have been made in connection with PIP claims tendered by or on behalf of hundreds of SCD's patients. Each such patient has assigned his or her rights to recover the facility fee charge to SCD.

10. Nationwide has withheld payment of PIP benefits for SCD's facility fee charges on the ostensible basis that the propriety of such charges is subject to an ongoing investigation by the Delaware Department of Insurance (the "Insurance Department investigation"). That investigation arose when Nationwide challenged the propriety of SCD's facility fee charges.

11. Nationwide's challenge to the propriety of SCD's facility fee charges is based on its contention that SCD lacks or may lack a necessary state license -- the license issued by the Delaware Department of Health and Social Services, under 16 Del. C. §122(3)(p)(3), to "freestanding surgical centers."

12. On information and belief, the Insurance Department investigation concluded years ago. Notwithstanding that fact, Nationwide continues to deny payment of PIP benefits for SCD's facility fee charges on the stated basis that it is still awaiting the investigation's conclusion.

13. In the course of investigating the propriety of SCD's facility fee charges, the Delaware Department of Insurance concluded that SCD is not a freestanding surgical center within the meaning of 16 Del. C. §122(3)(p)(3), and is therefore not subject to that provision's licensing requirement.

14. On or about April 25, 2003, the Delaware Department of Justice, writing on behalf of Delaware's state government and the Delaware Department of Insurance, concluded as followed:

[I]t is clear that SCD is under no current legal obligation to be licensed as a free standing surgical center under 16 Del. C. Chapter 1.

\*\*\*

There is no legal bar to SCD's seeking reimbursement from insurers for professional services and/or facility fees.

15. In the wake of these pronouncements by Delaware regulatory officials, there can be no reasonable basis for Nationwide's continued assertion of its "lack of license" and "ongoing investigation" themes: the Insurance Department investigation is not ongoing, and the appropriate state officials have declared that SCD lacks no necessary license. Yet Nationwide continues to withhold payment for SCD's facility fee charges on the purported basis that an ongoing Insurance Department investigation might someday lead to a finding that SCD lacks a necessary license as a freestanding surgical center.

16. Nationwide's continued refusal to pay SCD's facility fee charges is thus knowingly dishonest and grossly unreasonable. It evinces a conscious indifference to the contractual rights of the many SCD patients with whom Nationwide has contracted to provide PIP coverage.

17. In addition to denying PIP coverage for SCD's facility fee charges without reasonable basis (and, indeed, on a basis that has been conclusively shown wrong), Nationwide has routinely

ignored claims for facility fee charges for months at a time. Nationwide's failure to acknowledge and address these claims for such extended periods of time operates as a waiver of any right to deny PIP coverage for the affected charges.

### **The Patient Assignments**

18. SCD proceeds against Nationwide herein as assignee of certain Nationwide insureds who, during the relevant time period, assigned to SCD all rights available to them with respect to recovery of PIP benefits from Nationwide for medical services rendered by SCD. The claims for relief pled below are thus pled in connection with every such patient assignment. SCD will disclose evidence of those assignments in the course of discovery, and prove each such assignment at trial.

## **COUNT I**

### **Declaratory Judgment**

19. Plaintiff Spine Care Delaware, LLC repeats and incorporates by reference the allegations set forth in paragraphs 1 through 18 above.

20. Under Delaware law, and under the obligations imposed by Nationwide's respective insurance contracts with SCD's patient-assignors, Nationwide was required to pay covered claims for PIP benefits.

21. Under Delaware law, and under the obligations imposed by Nationwide's respective insurance contracts with SCD's patient-assignors, Nationwide was required to pay covered claims for PIP benefits with reasonable promptness.

22. Every facility fee charged by SCD in connection with PIP-related medical services rendered to Nationwide's insureds is, and at all times has been, a covered PIP claim.

23. Nationwide has failed to pay the facility fee charges referenced by this complaint.

24. Nationwide has failed to pay the facility fee charges referenced by this complaint with reasonable promptness.

25. Nationwide has failed to pay the facility fee charges referenced by this complaint within the (reasonable) time prescribed by 21 Del. C. §2118B.

26. An actual controversy of a justiciable nature exists between plaintiff Spine Care Delaware, LLC (on the one hand) and Nationwide (on the other), concerning the parties' rights and obligations under the subject Nationwide insurance contracts. The controversy is of sufficient immediacy to justify the entry of a declaratory judgment.

27. An award of declaratory relief by this Court will terminate some or all of the existing controversy between the parties.

## **COUNT II**

### **Breach of Contract**

28. Plaintiff Spine Care Delaware, LLC repeats and incorporates by reference the allegations set forth in paragraphs 1 through 27 above.

29. Nationwide has breached the subject contracts of insurance by denying and delaying payment of covered claims for PIP benefits, and (more specifically) the facility fee charges referenced by this complaint.

30. As a direct result of Nationwide's breaches of the subject insurance contracts, SCD's patient-assignors have been deprived of the benefit of the insurance coverage for which premiums were paid under those contracts. As a further result of Nationwide's breaches of contract, SCD is entitled to payment by Nationwide of statutory interest under 21 Del. C. §2118B(c).

### **COUNT III**

#### **Bad Faith Breach of Contract**

31. Plaintiff Spine Care Delaware, LLC repeats and incorporates by reference the allegations set forth in paragraphs 1 through 30 above.

32. Nationwide's denial of payment for covered PIP benefits (and, more specifically, the facility fee charge referenced by this complaint) has been without reasonable justification.

33. Nationwide's denial of payment for covered PIP benefits (and, more specifically, the facility fee charge referenced by this complaint) has been knowingly dishonest.

34. Nationwide's delay in the payment of covered PIP benefits (and, more specifically, the facility fee charge referenced by this complaint) has been without reasonable justification.

35. Nationwide's delay in the payment of covered PIP benefits (and, more specifically, the facility fee charge referenced by this complaint) has been knowingly dishonest.

36. As a direct result of Nationwide's bad faith breaches of the subject insurance contracts, plaintiff Spine Care Delaware, LLC has suffered and will suffer injury (including injury derivative of its patient-assignors) as heretofore alleged.

### **COUNT IV**

#### **Consumer Fraud**

37. Plaintiff Spine Care Delaware, LLC repeats and incorporates by reference the allegations set forth in paragraphs 1 through 36 above.

38. Nationwide's conduct, as alleged above, is in violation of 6 Del. C. §2513.


39. As a direct result of Nationwide's violations of 6 Del. C. §2513, plaintiff Spine Care Delaware, LLC has suffered and will suffer injury (including injury derivative of its patient-assignors) as heretofore alleged.

WHEREFORE, plaintiff Spine Care Delaware, LLC, as assignee of certain of its patient-assignors, respectfully requests that this Court enter judgment as follows:

- a. Declaring the parties' rights, duties, status or other legal relations under the disputed insurance contracts;
- b. Awarding to plaintiff Spine Care Delaware, LLC compensatory damages, including incidental and consequential damages, for Nationwide's breaches of its insurance contracts;
- c. Awarding to plaintiff Spine Care Delaware, LLC punitive damages for Nationwide's bad faith breaches of its insurance contracts;
- d. Awarding to plaintiff Spine Care Delaware, LLC compensatory and punitive damages for Nationwide's violations of 6 Del. C. §2513;
- e. Awarding to plaintiff Spine Care Delaware, LLC all costs of this action, all costs of the prosecution of this action, and its reasonable attorneys' fees, consistent with 21 Del. C. §2118B;
- f. Awarding to plaintiff Spine Care Delaware, LLC all costs of this action; and
- g. Awarding such other and further relief as this Court deems just and proper.

Respectfully submitted,

MURPHY SPADARO & LANDON

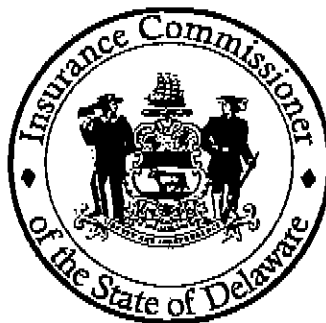


John S. Spadaro  
1011 Centre Road, Suite 210  
Wilmington, DE 19805  
(302)472-8101

January 18, 2006

Attorneys for plaintiff Spine Care  
Delaware, LLC

Matthew Denn  
Insurance Commissioner



Department of Insurance  
841 Silver Lake Blvd.  
Dover, DE 19904-2465  
(302) 674-7300  
(302) 739-5280 fax

FEBRUARY 10, 2006

**VIA CERTIFIED MAIL (70050390000458807866)  
RETURN RECEIPT REQUESTED**

CORPORATION TRUST COMPANY  
NATIONWIDE MUTUAL INSURANCE COMPANY  
CORPORATION TRUST CENTER  
1209 ORANGE STREET  
WILMINGTON, DELAWARE 19801

**RE: SPINE CARE DELAWARE, LLC VS NATIONWIDE MUTUAL  
INSURANCE COMPANY  
SUPERIOR COURT CA NO. 06C-01-177-JEB**

Dear SIR OR MADAM:

Pursuant to 18 Del. C. § 525, the Delaware Insurance Commissioner was served with the enclosed legal process on FEBRUARY 9, 2006.

**Please do not send your response to the enclosed documentation to the Delaware Insurance Department. Instead, you should respond directly to the person or legal representative identified in the enclosed legal process.**

Sincerely,

Donna M. Wysopal  
Administrative Specialist III  
Enclosure  
cc: JOHN S. SPADARO, ESQ.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF DELAWARE**

SPINE CARE DELAWARE, LLC	)	
	)	
Plaintiff,	)	C.A. No.
	)	
v.	)	
	)	TRIAL BY JURY DEMANDED
NATIONWIDE MUTUAL INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**NOTICE OF SERVICE**

**I HEREBY SERVE NOTICE** on this 13th day of March, 2006, that I served two copies of Notice of Removal via hand delivery to the following:

John Spadaro, Esq.  
Murphy Spadaro & Landon  
1011 Centre Road, Suite 210  
Wilmington, DE 19805

***MORGAN SHELSBY & LEONI***



ROBERT J. LEONI  
Rleoni@mslde.com  
221 Main Street  
Stanton, Delaware 19804  
(302) 995-6210  
Attorney for Defendant,  
Nationwide Mutual Insurance Company



JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Spine Core Delaware, LLC

(b) County of Residence of First Listed Plaintiff

New Castle

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

John S. Spodaro, Esq. 1011 Centre Rd.  
 Murphy Spodaro + London Wilmington, DE  
 (302) 432-8100

## DEFENDANTS

Nationwide Mutual Ins. Co.

County of Residence of First Listed Defendant

State of Ohio

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Robert J. Leoni, Esq.

221 Main Street

Stratton, DE 19804 (302) 995-6210

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Removal pursuant to 28 U.S.C. § 1441(a)

Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3-13-06

SIGNATURE OF ATTORNEY OF RECORD

Michael J. Lojullo, Esq.  
 for Robert J. Leoni, Esq.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 06 166 -

**ACKNOWLEDGMENT**  
**OF RECEIPT FOR AO FORM 85**

**NOTICE OF AVAILABILITY OF A**  
**UNITED STATES MAGISTRATE JUDGE**  
**TO EXERCISE JURISDICTION**

I HEREBY ACKNOWLEDGE RECEIPT OF 1 COPIES OF AO FORM 85.

**MAR 13 2006**

(Date forms issued)

(Signature of Party or their Representative)

Michael J. Logullo  
(Printed name of Party or their Representative)

**Note: Completed receipt will be filed in the Civil Action**